



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 10 2009

Joseph Anthony Montagano
P.O. Box 615
Goshen, IN 46527

RE: MUR 6104
Joseph Anthony Montagano

Dear Mr. Montagano:

On October 29, 2008, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on May 12, 2009, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Based on information before the Commission, it appears that you may have made an excessive contribution to Michael Montagano and Montagano for Congress in violation of 2 U.S.C. § 441a(a). The Commission cautions you to take steps to ensure that your conduct is in compliance with the Act and the Commission's regulations.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact Audra Hale-Maddox, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT:** Joseph Montagano

MUR 6104

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9 **I. GENERATION OF MATTER**

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11 This matter was generated by a complaint filed with the Federal Election Commission by
12 the National Republican Congressional Committee. See 2 U.S.C. § 437g(a)(1).

13 **II. FACTUAL SUMMARY**

14 The Complaint alleges that Joseph Montagano ("Joseph" or "Respondent"), made
15 excessive contributions to his son, Michael Montagano ("Montagano"), a candidate for the U.S.
16 House of Representatives in 2008, in connection with the purchase of a house for Montagano and
17 the payment of property taxes during his election campaign. The Complaint also questions
18 Montagano's purchase or lease of a Hummer H3 vehicle. In addition, the Complaint alleges that
19 Montagano's authorized committee, Montagano for Congress Inc. and Joseph Montagano, in his
20 official capacity as treasurer, ("the Committee") failed to report these excessive contributions.
21 The Complaint alleges that during the campaign, Joseph made the payments for Montagano's
22 personal automobile lease, for the house in which Montagano and his wife lived, and for the
23 property taxes for Montagano's house, and that Joseph had no history of making such payments
24 prior to, and irrespective of, Montagano's candidacy.¹

25 Michael Montagano was the 2008 Democratic nominee for Congress in Indiana's 3rd
26 Congressional District. According to the available information, Montagano graduated from law

¹ Although not specifically alleged in the complaint, FEC disclosure reports indicate that Montagano contributed \$25,000 to his campaign and loaned \$8,500 to his campaign in 2007. If, as the complaint contends, Montagano did not have a job or substantial assets during his candidacy, there may have been a question as to the source of these funds. However, as discussed on page 5 of this analysis, it appears that the candidate had sufficient personal funds to make the contributions and loans to his campaign.

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1 school in 2005 or 2006, joined a Lafayette, Indiana law firm during 2006, and took a leave of
2 absence from his job to run for Congress at age 27 against the 3rd District of Indiana incumbent
3 Mark Souder. Montagano filed his Statement of Candidacy with the Commission on
4 May 3, 2007. He also filed a Financial Disclosure Statement with the Clerk of the U.S. House
5 of Representatives indicating that during 2006, he had earned \$32,364.53 from the law firm, and
6 that through April 30, 2007, he had earned \$22,666.66 from the firm (later amended to
7 \$28,666.66 earned prior to his taking a leave of absence). Montagano also disclosed having
8 sold during 2006 an asset identified as Dennison Utility A valued at between \$50,000 and
9 \$100,000, and having a Chase bank account valued at between \$15,000 - \$50,000. *See*
10 Financial Disclosure Statement, Complaint Exhibit B. Montagano made two contributions to
11 the Committee, giving \$1,500 on May 1, 2007, and \$23,500 on June 26, 2007, and made two
12 loans, \$6,500 to the Committee on June 29, 2007, and an additional \$2,000 on
13 September 30, 2007, according to the Committee's disclosure reports. The Committee also
14 disclosed receiving from Joseph \$2,300 for the 2008 primary and \$2,300 for the 2008 general
15 election.

16 The available information indicates that during 2007, Montagano and his wife looked for
17 a home to purchase in Indiana's 3rd District. They found a house that suited them but which was
18 owned by a trust that also owned the two adjoining lots. The trust owners required that all three
19 properties be sold together. Joseph and Montagano decided to buy the three lots and the house
20 jointly and then convey the two unimproved lots solely to Joseph. According to the available
21 information, the owners of the trust wanted to move quickly to sell the property, and Joseph and
22 Montagano could not obtain a mortgage on the group of properties by the time that the trust
23 owners wanted to close the sale at the agreed-upon price of \$326,000. Therefore, Joseph, using

1 his own assets as collateral, obtained a \$226,000 bridge loan on July 12, 2007, and put up
2 \$100,000 of his personal funds to purchase the three properties jointly with Montagano on
3 July 13, 2007. Montagano and Joseph then conveyed the two unimproved lots solely to Joseph
4 on July 13, 2007.

5 Available information indicates that Montagano and his wife paid Joseph for their use of
6 the house in August and September, 2007. In October 2007, Joseph and Montagano obtained a
7 joint \$226,000 mortgage on the house, the proceeds of which were immediately used to pay off
8 the bridge loan. Available information further indicates that beginning in December 2007,
9 Montagano and his wife have made the full monthly mortgage payments in the amount of
10 \$1,465.83 directly to Lake City Bank, the mortgage holder.²

11 Also, it appears that prior to Montagano's candidacy, on December 28, 2006, Montagano
12 co-leased a Hummer H3 vehicle with Joseph.

13 Available information shows that Joseph provided security for Montagano's personal
14 financial commitments prior to and during the time that he was a candidate for Congress by
15 jointly purchasing the real estate and co-leasing his Hummer vehicle. However, the available
16 information indicates that Joseph, not Montagano, paid \$712.46 in property taxes for
17 Montagano's house on November 13, 2007. *See* Complaint Exhibit C.

18 Considering the modest amount of the possible violation, however, the Commission
19 dismisses as a matter of prosecutorial discretion the allegation that Joseph Montagano made
20 excessive contributions. *See Statement of Policy Regarding Commission Action in Matters at the*
21 *Initial Stage of the Enforcement Process*, 72 Fed. Reg. 12545 (March 16, 2007); *see also Heckler*

² The monthly mortgage payment of \$1,465.83 is similar to the earlier \$1,500 payments available information shows that Montagano made to his father for the bridge loan.

1 *v. Chaney*, 470 U.S. 821 (1985). The Commission cautions Joseph to make sure that his actions
2 comply with the law.

3 **III. ANALYSIS**

4 Under the Federal Election Campaign Act of 1971, as amended, ("the Act"), individual
5 contributions to a candidate for Federal office were limited to \$2,300 per election during the
6 2008 cycle. *See* 2 U.S.C. § 441a(a)(1)(A). The Committee has disclosed that Joseph contributed
7 \$2,300, the maximum allowable, for both the primary and the general election, and therefore any
8 other contribution by Joseph to the Committee would be excessive. Generally, when a person
9 other than the candidate pays for a candidate's personal expenses that would exist irrespective of
10 the candidate's campaign, such as a home mortgage or rent payment and non-campaign vehicle
11 expenses, that person makes a contribution to the candidate. *See* 11 C.F.R. § 113.1(g)(6);
12 2 U.S.C. § 439a(b)(2)(A). Candidates and their authorized committees are prohibited from
13 knowingly accepting contributions in excess of the limits of Section 441a(a). 2 U.S.C. § 441a(f).

14 Congressional candidates may make unlimited campaign expenditures from personal
15 funds.³ *See* 11 C.F.R. § 110.10. Montagano contributed \$25,000 and loaned \$8,500 to his
16 campaign. If the funds for Montagano's contributions and loans to his campaign were not
17 Montagano's personal funds, or if during Montagano's candidacy Joseph began paying for
18 Montagano's living expenses, Joseph may have made an excessive contribution. *See* 2 U.S.C.
19 § 441a(a).

³ "Personal funds" include all assets in which a candidate has legal title or an equitable interest, as well as salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is the beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; and proceeds from lotteries and similar legal games of chance. *See* 2 U.S.C. § 431(26); 11 C.F.R. § 100.33.

1 The available information suggests that rather than paying for Montagano's personal
2 expenses that existed irrespective of his candidacy, and therefore making excessive
3 contributions, Joseph largely served as a surety, as a co-purchaser of the group of properties that
4 contained Montagano's house⁴ and as a co-lessor on the automobile lease. With the exception of
5 the property tax payments of \$712.46, it appears from the available information that Joseph's
6 assistance to Montagano with his personal financial dealings during his candidacy has been in
7 the form of intangible support as a surety rather than as making payments to or for Montagano.
8 See 2 U.S.C. §§ 439a(b)(1) and 441a(a)(1)(A).

9 In addition, it appears from Montagano's Financial Disclosure Statement filed when he
10 declared his candidacy that he sold an asset (Dennison Utility A) during 2006 – prior to his
11 candidacy – valued at between \$50,000 and \$100,000. He also reported a Chase bank account
12 valued at between \$15,000 and \$50,000 at the time of his initial filing in May 2007, and reported
13 that the value of this account had fallen to a range between \$1,000 to \$15,000 during 2008. See
14 Financial Disclosure Statement, Complaint Exhibit B. The sale of this asset prior to the
15 declaration of Montagano's candidacy, coupled with the reduction in value of the Chase bank
16 account, could account for the funds Montagano contributed and loaned to his campaign, and the
17 Complaint offers no additional information to suggest otherwise. In sum, the available
18 information, including the documents publicly available, appears to adequately refute the bulk of
19 the allegations in the Complaint. However, the \$712.46 that Joseph appears to have paid in
20 property taxes on Montagano's house during his candidacy may constitute an excessive

⁴ Available information indicates that Joseph and Montagano replaced the bridge loan with the mortgage in mid-October, and the first payment on the mortgage was not due until December 1, 2007. Thus, as discussed *supra* it appears that Montagano made payments to his father, Joseph, for the two months during which Joseph held the bridge loan, ceased making those payments once the bridge loan was paid off by the mortgage, and then began making the mortgage payments when they came due.

1 contribution because Commission disclosure reports reveal that Joseph contributed the maximum
2 allowable amount in connection with Montagano's primary and general election.

3 Considering the modest amount of the possible violation, however, the Commission
4 dismisses as a matter of prosecutorial discretion the allegation that Joseph Montagano made
5 excessive contributions. *See Statement of Policy Regarding Commission Action in Matters at the*
6 *Initial Stage of the Enforcement Process*, 72 Fed. Reg. 12545 (March 16, 2007); *see also Heckler*
7 *v. Chaney*, 470 U.S. 821 (1985). The Commission cautions Joseph Montagano to make sure that
8 his actions comply with the law.

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